

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6159 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B.K. GOHEL

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR JF SHAH for Petitioner

MR MUKESH PATEL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a senior clerk working in the District Development Office, Dist. Panchayat, Bhavnagar, filed this writ petition before this Court with a grievance that the action of respondents not to allow him to change his date of option given by him for accepting the revised pay scale, is illegal.

2. The pay scale of the Government employees were revised with effect from 1.1.1973 under the Gujarat Civil Services (Revision of Pay) Rules, 1975 (hereinafter referred to as the 'Rules, 1975'). It is not in dispute that these Rules were notified on 21st October 1975 though effect has been given from 1.1.73. On 1.1.73, the petitioner was working as a senior clerk. The petitioner has given his option in the revised pay scale on 29th October 1975. Under the order dated 17th October 1981, the petitioner was given the selection scale of the post of senior clerk with effect from 11.2.74, i.e. earlier to 21st October 1975 and 29th October 1975. As the petitioner has been given selection scale for the post of senior clerk from 11.2.74, the petitioner prayed for a change of the date of option in the revised pay scale. The option for revised pay scale which has been given by the petitioner earlier was on the basis that he was only a senior clerk. But the change of the option necessitated as in the year 1981, the petitioner has been given the selection scale of senior clerk from 11.2.74.

3. The option is normally given by an employee for the revised pay scale keeping in view the date on which he will get maximum benefits. Naturally, when the petitioner was given selection scale of the post from 11.2.74, possibly the date of option which has been given for the revised pay scale earlier may not be beneficial to him. These are things for the benefits of the employees and not for putting them to loss or to cause them prejudice. The prayer which has been made by the petitioner for change of the date of option for the revised pay scale has been declined by the respondent on the ground that it is not proper to permit revision of option as and when there is change in the promotion/service grade. The reasons which have been given are highly arbitrary. The matter would have been different where the selection scale is given to the petitioner before he has opted for the revised pay scale. But the petitioner has been given selection scale, though after he opted for the revised pay scale, but from retrospect effect, i.e. the date earlier to the date of the option of revised pay scale. There is a limitation prescribed under the Rules 1975 within which the option has to be given. Otherwise it will be taken to be from 1.1.73. On the date on which the petitioner has given the option he could not have dreamed that in the year 1981, he will be given selection scale of the post of senior clerk with effect from 11.2.74. Otherwise also, in the Rules 1975, there is a provision for relaxation of the Rules and a reference in this respect may have to Rule 13 of the Rules 1975. Rule 5 of Rules 1975 has been

reproduced by the petitioner in para-4 of this petition. The relevant Rules provide that where the Government is satisfied that the operation of any of the provisions of these Rules causes undue hardship in any particular case, it may by order dispense with or relax the requirement of that Rule to such extent and subject to such conditions, as it may consider necessary to dealing with the case in a just and equitable manner. Certainly, in the present case the date of option which has been given by the petitioner may now cause undue hardship in the changed circumstance. While making the order impugned in this Special Civil Application, the respondents have lost sight of the aforesaid provisions of the Rules 1975. The respondent No.1, while passing the order dated 30th August 1983, impugned in this Special Civil Application has not considered the Rule 13 of the Rules 1975.

4. In the result, this Special Civil Application is allowed and the order dated 30th August 1983 is set aside. The matter is sent back to the respondent No.1 with directions to consider the case of the petitioner for revision of the date of option in accordance with Rule 13 of the Rules 1975. Necessary order in this respect may be made by the respondent No.1 within a period of three months from the date of receipt of certified copy of this order. In case the respondent No.1 decided the matter in favour of the petitioner, then the petitioner shall be entitled for all consequential benefits following therefrom. In case, still the respondent No.1 do not decide the matter in favour of the petitioner, it is expected that a reasoned order may be made and a copy of the same may be sent to the petitioner by registered post. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)